

June 7, 2000

Precedents and Precepts

The Senate May Originate Appropriations Bills

In October of 1962, the United States Senate passed a resolution “respectfully assert[ing] its power to originate bills appropriating money for the support of the Government.”¹ The resolution was for the primary benefit of the House of Representatives which earlier had passed a resolution telling the Senate, respectfully, to mind its own business.²

The 1962 resolution was just one in a long line of statements and actions by which the U.S. Senate has asserted and reasserted its right to originate appropriations bills.

The Constitution’s “Origination Clause”

The Constitution of the United States says, “All Bills for raising Revenue shall originate in the House of Representatives.”³ The Senate understands the Constitution to mean what it says

¹ The Senate’s resolution, S. Res. 414 of the 87th Congress, is printed in the Appendix to this paper. The resolution was agreed to by voice vote; Senator Richard Russell (D-GA) said he was “sure the Senate is unanimously in support of this proposition.” 108 *Cong. Rec.* 23470 (1962).

² The House’s resolution was, of course, couched in language more genteel: “*Resolved*, That Senate Joint Resolution 234, making appropriations for the Department of Agriculture for the fiscal year 1963, in the opinion of the House, contravenes the first clause of the seventh section of the first article of the Constitution and is an infringement of the privileges of this House, and that the said joint resolution be taken from the Speaker’s table and be respectfully returned to the Senate with a message communicating this resolution.” The House’s resolution, H. Res. 831 of the 87th Congress, was agreed to by vote of 245 to 1. *Id.* at 23014-15.

³ U.S. Constitution, Article I, section 7, clause 1.

and no more; namely, that bills *for raising revenue* must originate in the House. The Senate's position is that the Origination Clause applies to tax bills ("bills for raising revenue") but *not* to other bills.⁴

The Senate's 1962 resolution said that the Origination Clause "does not in anywise limit or restrict the privileges and power of the Senate with respect to any other legislation." The "other legislation" that the Senate particularly had in mind is general appropriations bills.

⁴ A discussion of the intentions of the Framers of the Constitution is beyond the scope of this paper. However, it appears that most students of the Constitutional Convention of 1787 have concluded that the delegates intended for the Origination Clause to apply to revenue bills only, and not to appropriations bills. See, e.g., [1] the 1881 Report of the House Judiciary Committee, quoted later in this paper; [2] "The Authority of the Senate to Originate Appropriation Bills," S. Doc. 17, 88th Cong., 1st Sess (1963) (prepared by the staff of the Sen. Comm. On Government Operations) ("[I]t may be stated unequivocally that there is nothing either in the language of the Constitution or in the debates of the delegates to the Constitutional Convention on 1787 which, in any way, lends support to the position of the House."). [3] Memorandum to Hon. Daniel Evans From American Law Division (signed Johnny H. Killian, Senior Specialist), Congressional Research Service, Library of Congress, March 11, 1988, reprinted at 134 *Cong. Rec.* 21804-05 (Aug. 11, 1988) ("[I]t is evident that the Convention intended the distinction drawn in the language of the clause, its applicability only to tax bills, especially in light of the consideration over the course of the Convention of language that specifically referred to appropriations bills separate from revenue bills."). [4] L. Fisher, "The Authorization-Appropriations Process: Formal Rules and Informal Practices," Congressional Research Service, Library of Congress, Rept. No. 79-161 GOV, pp. 66-70 (Aug. 1, 1979) ("There is little doubt that the delegates explicitly rejected the idea of giving the House the monopoly in originating appropriations."). See also, S. Horn, *UNUSED POWER: THE WORK OF THE SENATE COMMITTEE ON APPROPRIATIONS* 246-48 (1970) (Appendix B, "The Origination of Appropriations Bills, 1787-1861," is very useful). For a dissenting opinion, see the article by Senator John Sharp Williams (D-MS) which was reprinted as S. Doc 872, 62nd Cong., 2d Sess. (1912) (titled "The Supply Bills"). Some of the disagreement about the intentions of the Framers was generated by James Madison and Alexander Hamilton who, in their *Federalist Papers*, explained the Constitution in a way that may be at odds with what actually happened in the Convention. (For Madison's role, see S. Horn, *id.* at 248-49.) Reference usually is made to *The Federalist* of February 20, 1788, which sometimes is numbered No. 57 and sometimes is numbered No. 58 ("The house of representatives . . . alone can propose the supplies requisite for the support of government."). The authorship of that paper is in some dispute. If it was written by Hamilton, the difference between the text of the Constitution and the record of the Convention, on the one hand, and the view of *The Federalist*, on the other, may, perhaps, be explained by Hamilton's absence from the Convention during July, August, and the first week of September, 1787. If the paper was written by Madison, a more complex explanation would be needed.

Contrary to the position of the Senate, the House of Representatives claims the exclusive right to originate *both* tax bills and general appropriations bills.⁵

With the House, the Senate acknowledges that there is a long history of general appropriations bills originating in the House. However, the Senate regards this long history as merely *customary* and not *obligatory*.⁶ The Senate's 1962 resolution spoke also to this point: "The acquiescence of the Senate in permitting the House to first consider appropriation bills cannot change the clear language of the Constitution nor affect the Senate's coequal power to originate any bill not expressly 'raising revenue'."

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With its 1962 resolution, the Senate was merely restating its long-held position: **As early as 1797 there were United States Senators who were denouncing the House's practice of holding appropriations bills until the last days of a session, and they asserted the right of the Senate to "originate any bill for appropriating moneys for the support of government, or of the military and naval establishments. . . ."**⁷

The first appropriations bill to have originated in the Senate may have been in 1816; it is described by one scholar as "a major supplemental" bill and "not one of the regular general

⁵ "Under the Constitution, it is exclusively the prerogative of the House to originate 'revenue' bills [quoting Art. I, sec. 7, cl. 1]. The House has traditionally taken the view that this prerogative encompassed the sole power to originate all general appropriations bills. (And on more than one occasion the House has returned to the Senate a Senate bill or joint resolution appropriating money on the ground that it invaded the prerogatives of the House.) . . ." W.H. Brown, *HOUSE PRACTICE: A GUIDE TO THE RULES, PRECEDENTS AND PROCEDURES OF THE HOUSE* 70-71 ("Appropriations, §2") (1996) (citations omitted).

⁶ For the House, there does not seem to be a distinction between custom and command. In the view of the House, a custom long observed has become a constitutional command. "Under immemorial custom the general appropriations bills, providing for a number of subjects as distinguished from special bills appropriating for single, specific purposes, originate in the House of Representatives and there has been no deviation from that practice since the establishment of the Constitution." C. Cannon, *CANNON'S PROCEDURE IN THE HOUSE OF REPRESENTATIVES* 20 (1959) (citations omitted). See also, the remarks of Representative Cannon on the House floor on Oct. 10, 1962, 108 *Cong. Rec.* 23014 ("The priority of the House in the initiation of appropriation bills is buttressed by the strongest and most impelling of all rules, the rule of immemorial usage.").

⁷ S. Horn, *UNUSED POWER: THE WORK OF THE SENATE COMMITTEE ON APPROPRIATIONS* 250 (1970) (quoting *Annals of Congress*, May 16, 1789).

appropriations bills.”⁸ (Both the House and the Senate recognize a distinction between *general* appropriations bills and *specific* appropriations bills.⁹)

In 1881, the Committee on the Judiciary of the House of Representatives concluded that the Senate had the constitutional power to originate appropriations bills. The Committee said:

“From this brief summary it will be seen that the proposition was more than once presented to the [constitutional] convention to vest in the House of Representatives the exclusive privilege of originating ‘all money bills’ *eo nomine* [Latin: by or under that very name], which was as often rejected. It would seem obvious, therefore, that the framers of the Constitution did not intend that the expression “bills for raising revenue,” as employed by them, should be taken as the equivalent of that term as it was understood in English parliamentary practice; for, if they had so intended, they would surely have used that term itself, which had already received a fixed and definite signification from long and familiar usage, instead of the one they chose to employ.”¹⁰

In 1935, in response to a point of order raised against an appropriations bill, the president *pro tempore* ruled that “there is no constitutional limitation upon the Senate to initiate an appropriation.”¹¹

⁸ *Id.* at 250-51.

⁹ The handbook of Senate procedure lists numerous examples of “specific appropriations” that have originated in the Senate. F. Riddick & A. Frumin, RIDDICK’S SENATE PROCEDURE 153 n. 4 (rev. ed. 1992). The examples run from volume 15 of Statutes at Large (Pub. Res. No. 29, signed March 30, 1867) through volume 68 of Statutes at Large (Senate bill 2475, Pub. L. 83-480, signed July 10, 1954), showing that the practice is not a recent innovation.

¹⁰ F. Riddick & A. Frumin, RIDDICK’S SENATE PROCEDURE 154 (rev. ed. 1992), quoting H. Rept. No. 147, 46th Cong., 3d Sess. See also, “The Senate May Constitutionally Originate Any Appropriation Bill,” reprinting a speech of Rep. N.J. Hammond (D-GA) on the floor of the House of Representatives (1885) [call no. JK 1074 / .H3].

¹¹ F. Riddick & A. Frumin, RIDDICK’S SENATE PROCEDURE 153, text at n. 5 (quoting 79 *Cong. Rec.* 6860 (May 3, 1935)). Usually, constitutional points of order are not decided by the chair but are submitted to the entire Senate for its decision. Indeed, it has been held that “the Presiding Officer has no authority to pass upon a constitutional question, but must submit it to the Senate.” *Id.* at 685. It appears that the entire Senate has never decided the question of the constitutionality of originating an appropriations bill.

In 1953 the Senate passed S.J.Res. 52 making an appropriation from the general fund of the District of Columbia. The House returned the resolution to the Senate after the House concluded that the resolution infringed on its privileges.¹²

In 1962 the Senate passed S.J.Res. 234 which made appropriations for the Department of Agriculture. The House sent the resolution back to the Senate, and the Senate then restated its constitutional position. That resolution has been referred to already and, because of its importance, it is reprinted in the Appendix to this paper.

According to the Congressional Research Service, from fiscal year 1982 through fiscal year 1997 the Senate Appropriations Committee reported 35 Senate-originated and Senate-numbered appropriations bills. In most cases, the Senate took no action on the Senate bills but waited for a House bill (CRS did not compile data on whether the Senate bills were acted on).¹³

In recent years, the Senate has *passed* appropriations bills *before* the House has, and then the Senate held its bill until it received a House-passed and House-numbered vehicle. This happened several times during the 105th Congress. For example, the Senate passed the Defense Appropriations Act, S. 1005, on July 15, 1997, by a roll call vote of 94 to 4. After final passage, Senator Stevens asked unanimous consent that the "bill, S. 1005, not be engrossed, that it remain at the desk pending the receipt of the House companion measure," and that "when the House companion measure is passed pursuant to the previous order, the passage of S. 1005 be vitiated and that S. 1005 be indefinitely postponed."¹⁴ The House's Defense Appropriations Act, H.R. 2266, passed the House on July 29.

Similarly, the Senate-numbered Commerce-Justice-State-Judiciary Appropriations Act, S. 1022, passed the Senate on July 29. The House's companion bill, H.R. 2267, did not pass the House until September 30, 1997.

¹² 3 DESCHLER'S PRECEDENTS OF THE UNITED STATES HOUSE OF REPRESENTATIVES, Ch. 13, §20.3.

¹³ The CRS data cited in the main text are not published. However, the numbers quoted were used in arriving at the following conclusion, which has been published: "Prior to the 105th Congress (calendar years 1997 and 1998), the Senate usually did not initiate its own appropriations bills; instead, it considered and amended House-passed bills both in committee and on the floor. The Senate Appropriations Committee . . . occasionally originated an appropriations bill when there was a significant delay in House consideration. Since the beginning of the 105th Congress, however, the Senate Appropriations Committee has reported all or almost all of the 13 regular bills as original bills." S. Streeter, "The Appropriations Process: An Introduction," CRS Report for Congress, No. 97-684 GOV, p. 4 (updated April 11, 2000).

¹⁴ 143 Cong. Rec. S7459 (daily ed. July 15, 1997).

Appendix

Senate Resolution 414 of the 87th Congress
Passed the Senate by Voice Vote on October 13, 1962

"Whereas the House of Representatives has adopted House Resolution 831 alleging that Senate Joint Resolution 234, a resolution continuing the appropriations for the Department of Agriculture, to be in contravention of the first clause of the seventh section of the Constitution and an infringement of the privileges of the House; and

"Whereas this clause of the Constitution provides only that 'All bills for raising revenue shall originate in the House of Representatives,' and does not in anywise limit or restrict the privileges and power of the Senate with respect to any other legislation; and

"Whereas the acquiescence of the Senate in permitting the House to first consider appropriation bills cannot change the clear language of the Constitution nor affect the Senate's coequal power to originate any bill not expressly 'raising revenue'; and

"Whereas the Committee on the Judiciary of the House of Representatives, pursuant to a directive of the House of Representatives, reported to the House in 1885 that the power to originate bills appropriating money from the Treasury did not reside exclusively in the House: Therefore be it

"Resolved, That the Senate respectfully asserts its power to originate bills appropriating money for the support of the Government and declares its willingness to submit the issue either for declaratory judgement by an appropriate appellate court of the United States or to an appropriate commission of outstanding educators specializing in the study of the English language to be chosen in equal numbers by the President of the Senate and Speaker of the House; and be it further

"Resolved, That a copy of this resolution be transmitted to the House of Representatives."

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